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NO. 87-447

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

MARTIN HARRIS, et al.,
Plaintiffs-Respondents

v.

IRENE PERNSLEY, et al.,
Defendants-Respondents

RONALD D. CASTILLE,
District Attorney of Philadelphia County,
Proposed Intervenor-Petitioner

REPLY BRIEF FOR PETITIONER

GAELE McLAUGHLIN BARTHOLD
Deputy District Attorney
(Counsel of Record)
LAURIE MAGID
Assistant District Attorney
SARAH B. VANDENBRAAK
Chief, Civil and Exceptional Litigation
RONALD EISENBERG
Chief, Appeals Unit
WILLIAM G. CHADWICK, JR.
First Assistant District Attorney

Counsel for Ronald D. Castille,
District Attorney of Philadelphia County

1421 Arch Street
Phila., Pa. 19102
(215) 686-5700

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SUPPLEMENTAL STATEMENT OF THE CASE

On September 14, 1987, petitioner Ronald D. Castille, District Attorney of Philadelphia County, filed a petition for certiorari seeking review of the Third Circuit's decision in Harris v. Pernsley, 820 F.2d 592 (3d Cir. 1987), which affirmed

(1) the denial of Mr. Castille's motion to intervene in this prison conditions lawsuit, and (2) the District Court's approval of a consent decree requiring the release or non-admission of prisoners to meet stringent prison population caps although there has been no finding that the Philadelphia County prisons are unconstitutionally overcrowded. In this Reply Brief, petitioner updates the case's procedural history and includes information concerning the municipal defendants-respondents' inability to meet the caps to which they agreed. These subsequent events further substantiate the need for this Court's review.

Well prior to the filing of his certiorari request, petitioner sought a stay from this Court. Pending response and full Court consideration, a temporary stay was entered on July 23, 1987, by the Honorable Byron R. White. In their subsequent response, respondents clearly led both

this Court and petitioner to believe that they had planned sufficiently to continue to meet the population caps, that there would be no release of prisoners other than low bail pre-trial detainees, and that there would be no need to close the prison doors and refuse to admit newly sentenced or arrested persons in order to comply with the population caps.[1]

On August 3, 1987, the full Court denied a stay. At that time, the first

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[1] See Response of City Respondents to Petitioner's First Application, page 7 ("[T]he City respondents have undertaken ... to institute systemic changes that will completely avoid any wholesale release of prisoners in the future."); page 8 ("[T]he City respondents will decrease the prison population without any wholesale release of inmates...."); pages 26-27 ("[T]he population of the Philadelphia Prison System has been reduced, safely and gradually, from 4,300 to 3,950 inmates."); page 29 ("The City respondents have continued the planning necessary to meet the ordered population levels ... An essential component of that plan is to reduce the number of pre-trial detainees being held on low bail....").

population cap of 3,950 had just recently taken effect, the consent decree had not been violated, and only the least drastic enforcement mechanism -- release of prisoners by lowering bail -- had been implemented.

Despite both the assertions of the municipal defendants-respondents as to existing plans to meet the caps, and their efforts beginning in March of 1987 to lower the population by releasing prisoners on bail, the prison population exceeded the population cap for all but eleven days from July 30, 1987 to October 4, 1987, the last date for which petitioner has figures. Indeed, to the best of petitioner's knowledge, the population cap has never been met since September 4, 1987. The municipal defendants-respondents' inability to meet their agreement occurred because, contrary to their claims, there simply are not enough low-risk inmates that can responsibly be

released to meet the population caps. The state bailmaster has refused to release prisoners in the number sought by respondent.

Under the consent decree, the municipal defendants-respondents' inability to meet the caps meant that non-admissions would occur at least by September 26, 1987. Petitioner, therefore, filed a second application for a stay, based on changed circumstances, with this Court on September 18, 1987. On September 22, 1987, however, the Clerk's Office informed petitioner that his application would not be considered until the Third Circuit had had an opportunity to consider the changed circumstances and enter a stay. Petitioner, therefore, filed a second motion for a stay pending certiorari with the Third Circuit on September 23, 1987. At approximately the same time, the municipal defendants-respondents, who

were still unable to meet the cap through bail releases, filed a Motion to Enlarge Time for complying with the consent decree with the District Court in order to avoid beginning the September 26, 1987 admissions moratorium.

On September 25, 1987, the Honorable Norma L. Shapiro, the judge who had approved the consent decree, delayed the implementation of the non-admissions provision and denied as moot the Motion to Enlarge Time. The municipal defendants-respondents, however, avoided the September 26, 1987 admissions moratorium by entering a stipulation with the plaintiffs-respondents which was then incorporated into Judge Shapiro's order denying the Motion to Enlarge Time. In addition to approving the stipulation, Judge Shapiro's order (1) required briefing

on three new subjects,[2] (2) required that the parties provide figures on four groups of inmates,[3] and (3) scheduled a hearing for November 5, 1987. In the stipulation, the respondents acknowledged that, unless there was an admissions moratorium, the caps could not be met pursuant to the present

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[2]The matters to be briefed are: (1) under Pennsylvania law, where inmates serving sentences of between two and five years may be held, by whom the place of incarceration is determined and whether this determination is mandatory, discretionary, final or appealable; (2) Pennsylvania and federal law regarding timeliness of sentencing; and (3) Pennsylvania and federal law regarding incarceration of probation and parole violators and timeliness of disposition of said charges.

[3]These are (1) inmates serving sentences of between two and five years in the Philadelphia prisons who are eligible for incarceration in state correctional facilities; (2) inmates held on alleged violation of state probation or parole who could be incarcerated in state correctional facilities awaiting review of their charges; (3) convicted inmates awaiting sentencing and the length of time since conviction; and (4) persons held for trial in Philadelphia's Municipal Court and the length of time they have been held.

consent decree's enforcement mechanisms. The parties asserted that they would attempt to comply with the caps by agreeing on new enforcement mechanisms that would reduce the alleged delay in various judicial hearings. The final cap of 3,750 was moved from October 19, 1987 to November 23, 1987. By October 1, 1987, the parties were to have submitted to Judge Shapiro a timetable of intermediate caps or milestones. The stipulation provides that this new timetable of caps will be enforced according to the original non-admissions provision. The new schedule, which was timely submitted, provides as follows:

October 15 - 3,950
November 9 - 3,850
November 23 - 3,750

It is unclear what mechanism(s) will ultimately be adopted to meet the caps agreed to by the City. Under the stipulation, however, the parties must submit to the District Court, by October 26, 1987, a

plan approved and endorsed by officials of the Court of Common Pleas of Philadelphia County and the Municipal Court of Philadelphia County. This plan is intended to provide a new means of enforcing the previously agreed upon population caps and must include changes in court administration to accelerate hearings, trials, and sentencings. The order also requires the respondents to negotiate and implement a whole new set of prisoner release mechanisms without providing any notice to or participation by petitioner. In addition, Judge Shapiro has requested briefs, statistics or proposed plans on nearly every aspect of the state's criminal judicial system in Philadelphia, and has indicated in a letter to Chief Justice Nix of the Pennsylvania Supreme Court, that she will consider appointing a federal prison master at the November 5, 1987 hearing now scheduled. All of the foregoing demonstrates a very substantial

likelihood of impermissible federal court intrusion into the state court system.

On October 5, 1987, a divided Third Circuit panel, after considering, inter alia, the District Court's intervening action extending the time for the non-admissions moratorium, denied petitioner's stay request. It remains to be seen whether the municipal defendants-respondents can now responsibly meet the agreed-upon caps.[4] Recently, the Administrative Judge of the Common Pleas Court advised petitioner that the municipal defendants-respondents are now actively seeking to meet the cap by obtaining 300 beds on an emergency basis in the state prison system. Should they be successful in this stopgap endeavor, petitioner will not again seek

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[4] They have recently attempted to do so by seeking the early release of approximately 200 sentenced county prisoners. Petitioner has taken great exception to that approach.

an emergency stay from this Court. The problem created by the caps which they have agreed to, however, will remain for years to come.

The activity in this case subsequent to petitioner's filing for certiorari on September 14, 1987, while important to the question of the appropriateness of a stay, in no way changes the substantive issues presented in the petition for certiorari. Respondents have carried out some of the actions that petitioner contends they wholly lack the legal authority to undertake. They have, in fact, agreed in the latest stipulation to implement further actions to enforce the population caps which are, likewise, beyond their legal authority.

SUPPLEMENTAL ARGUMENT

The municipal defendants-respondents claim in their response that the district court was presented with a prima facie case of overcrowding and imply that the district court judge found that there had been a prima facie showing of unconstitutional conditions. They further allege that merely a prima facie showing of any federal law violation provides a sufficient basis for contravening state statutory law and state judicial orders.

The only case respondents cite for this latter remarkable view on the powers of federal courts to approve decrees which violate state law is Sarabia v. Toledo Police Patrolman's Association, 601 F.2d 914 (6th Cir. 1979). In Sarabia, however, there was no clear statement on whether discrimination had been admitted or proved. The reference in the decree to "past

employment discrimination" indicates that there was an admission, not merely prima facie proof, of discrimination.[5]

Likewise, the municipal defendants-respondents erroneously suggest that Judge Shapiro found prima facie evidence of unconstitutional conditions. Her opinion indicates quite the contrary. Specifically, she stated that changes in the law, most notably Rhodes v. Chapman, 452 U.S. 337 (1981), and the use of the totality of the conditions of confinement test, "virtually eliminate[s] the likelihood that conditions of confinement will be declared unconstitutional on a motion

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[5]By way of contrast, the plaintiffs-respondents ignore the supremacy clause completely and misstate petitioner's argument. Petitioner does not claim that consent decrees cannot be approved absent a finding of unconstitutionality. Rather, petitioner more narrowly argues only that when a consent decree violates state law, there must be a finding of unconstitutionality.

for summary judgment" (R. A-1175). She further acknowledged that even serious overcrowding could be insufficient to prove unconstitutional conditions.[6]

The municipal defendants-respondents further imply that the evidence presented at the intervention hearing supported a prima facie case of unconstitutional overcrowding. This is untrue. Respondents presented no evidence on this issue. Rather, it was petitioner who presented extensive stipulations at the intervention hearing to establish that the

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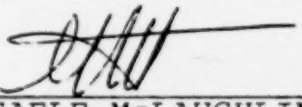
[6]The municipal defendants-respondents also claim that the finding of the state court in 1972, see Jackson v. Hendrick, 10 Pa. Commw. 392, 309 A.2d 187 (1973), that there were unconstitutional conditions is a component of their prima facie showing of present unconstitutional conditions. In 1986, however, the Pennsylvania Supreme Court, in Jackson v. Hendrick, 509 Pa. 456 (1986), vacated a prior finding of unconstitutionality and remanded the case. Indeed, Judge Shapiro noted in her opinion that "[r]ecent developments in the Jackson litigation also make a finding of liability less certain" (R. A-1175).

prisons, which then held approximately 4,300 inmates, were not unconstitutionally overcrowded. This evidence included the specific number of cells, the cell sizes, the average prison population figures, the prisoner's daily routine, and the extensive medical and psychiatric care available, as well as the comprehensive social service, educational, vocational and recreational programs. See Third Circuit Appendix at 627-747. In total, far from establishing a prima facie case of unconstitutional conditions, this evidence refuted any conceivable claim that the prison population unconstitutionally exceeded the prison's capacity.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in petitioner's principal petition for writ of certiorari, it is respectfully requested that a writ of certiorari issue to review the decision below.

Respectfully submitted



GAELE McLAUGHLIN BARTHOLD
Deputy District Attorney
(Counsel of Record)
LAURIE MAGID
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First Assistant District Attorney

Counsel for Ronald D. Castille, District Attorney of Philadelphia County

1421 Arch Street
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(215) 686-5700

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